Canadian Symposium on Holocaust-era Cultural Property

Canadian Museums Association / Canadian Jewish Congress

A Matter of Justice
Recommendations of the Canadian Symposium on Holocaust-era Cultural Property

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Introduction

The following observations and recommendations arise from the Canadian Symposium on Holocaust-era Cultural Property, held at the National Gallery of Canada from 14-16 November 2001.

The Canadian Museums Association (CMA) and the Canadian Jewish Congress (CJC) organized the symposium jointly with major support from the National Gallery of Canada, the Department of Canadian Heritage, the Canadian Art Museum Directors Organization (CAMDO), the Gelmont Foundation, Christie's and Sotheby's auction houses.

The aim was to explore the complex historical, research, legal and moral issues and challenges posed by the potential presence of Nazi-spoliated works of art and other cultural property in Canadian public collections; and to develop recommendations toward a national strategy to address these issues with the diligence and professionalism they demand.

Some 80 invited speakers and delegates attended from Canada, the United States and Europe. They represented a cross-section of interests from museums to art dealers, libraries, archives and concerned federal departments and agencies.

Panels were organized around four key issues:

- The current legal framework governing the treatment of spoliated cultural property and Holocaust-era assets in particular;
- The challenge of ascertaining the provenance of cultural property that may have been stolen or confiscated;
- Current approaches to resolving claims by individuals, organizations and national governments for the restitution of cultural property; and for treating spoliated works where there is no apparent heir; and
- The roles and responsibilities of the several stakeholders engaged in the issue.

The panels were followed by two discussion groups charged with bringing forward recommendations concerning three questions:

- What should be the main elements of a Canadian strategy on Holocaust-era Cultural Property?
- How should Canada be organized to swiftly and effectively implement that strategy; and
- What are the main operational requirements of institutions in implementing the strategy?

The discussion groups independently developed very similar recommendations indicating a strong consensus as outlined below.

Background

The enormity of the Nazi looting of art is unprecedented in history and momentum is growing throughout the world to resolve this long-standing issue. Museums, including galleries, archives and others housing objects with gaps in their provenance traced to the Nazi era, are on the front line in this effort and Canada is no exception.

There is a growing sense of urgency to resolve the issue as the original victims, and even their descendants and heirs, succumb to the passage of time. As most of the victims perished in the concentration camps, there are untold thousands of looted works outstanding with no apparent heir and little likelihood of finding one. As the surviving victims fail and pass on with greater frequency, they and their descendants are naturally feeling the pressure to seek closure to a long-standing and painful experience.

As this pressure grows in intensity, governments and cultural institutions around the world are increasing their efforts to identify spoliated works and effect restitution on behalf of the victims. A myriad of on-line archival registries and document research centres has sprung up in Europe and North America focused on the provenance of spoliated holocaust-era assets. In fact, as the amount of information available to victims and researchers grows exponentially, this in itself is fuelling expectations and increasing the pressure of institutions to respond in kind.

In this setting, two pivotal international conferences on the treatment of spoliated Holocaust-era assets—one in Washington, DC (1998), and the second in Vilnius, Lithuania (2000)—produced groundbreaking declarations urging concrete action on this front by participating governments and cultural institutions. Canada was represented at both gatherings and has endorsed the recommendations.

Canada has not been idle in responding to the call for action. In 1999, the Canadian Art Museum Directors' Organization (CAMDO), including the Directors of some of Canada's most prestigious art museums, adopted guidelines patterned closely after those issued by the American Association of Art Directors (AAMD), for dealing with the problem. As well, a number of institutions have worked for some time to research their collections and publish works on the Internet with gaps in their provenance during the Nazi era.

Recent events indicate, however, that the pace of progress is uneven throughout Canada and that opinions vary on the ways and means of achieving progress. Following consultations with the Department of Canadian Heritage and a sizable cross-section of museum executives, the CMA and CJC agreed that a symposium of key stakeholders would be timely and essential to provide a suitable focus on the issue and establish a firm basis for concrete action.

Discussion

What should be the main elements of a Canadian strategy on Holocaust-era Cultural Property?

Key Principles

There are key principles that should govern Canada's treatment of Holocaust-era cultural property:

A Moral Issue

The systematic plunder of cultural treasures during the Nazi regime has robbed many thousands of innocent victims and their descendants of their cultural identity, dignity and security. The price is still being paid by the victims' families who must often contend with a long, complicated and emotionally painful journey when trying to find and redeem their lost objects.

Recognizing the varied and complex legal requirements bearing upon the treatment of Holocaust-era cultural property, this is also a fundamental moral issue that speaks directly to Canada's stature as a proponent of social justice and diversity. It is also an urgent issue calling for immediate action by all parties concerned.

Every museum in Canada has a moral obligation to check its collection for possibly tainted works from the 1933-45 era. Where there are gaps in the provenance of such objects, museums have the responsibility to declare this publicly and pursue restitution in accordance with recommendations in this report and guidelines issued by professional associations.

A Made-In-Canada Solution

However Canada may respond to the issue, any strategy must conform to our particular and unique geopolitical circumstances. There are several factors:

1. Canada is a federal state in which power to deal with the issues concerning cultural property is shared between the federal and provincial governments;
2. The Canadian museum community is comparatively small in relation to other affected countries, such as the United States. It is also dispersed across vast distances making communication and coordination a costly and difficult exercise; and
3. Many institutions potentially implicated in the issue are very small, lack the necessary in-house expertise and are struggling with strict budgetary constraints.

A Template

While the immediate focus of discussion is on Holocaust-era cultural property, the broad principles engaged apply as well to other circumstances (e.g., First Nations). *Canada's strategy, therefore, should be designed as a template for guidance in dealing with comparable issues in the future. It should be adaptable to changing circumstances and not regarded as a single-purpose and temporary exercise.*

An Inclusive Approach

This is a national issue engaging a broad array of stakeholders. The strategy must incorporate mechanisms to ensure that the interests of all stakeholders are taken into account. These include:

Museums	Potential claimants	Donors
Canadian Museums Association	Canadian Jewish Congress	Provincial Museum Associations
Canadian Art Museum Directors Organization	Provincial/Territorial governments	Federal government
Archives	Art dealers	

Consider the Claimant

One of the central goals of the strategy must be to ease the task of Holocaust victims and their descendants in locating and recovering their lost property. *Our strategy must engage potential claimants through outreach initiatives and other means to encourage and facilitate the search for information. Furthermore, the planning and decision process must be open and transparent to the public.*

Beyond Art

While the focus of discussion is on spoliated art, Canada's strategy must consider other forms of cultural property that may be tainted, including documents and other kinds of moveable property such as furnishings and historic artefacts.

Negotiate—Don't litigate

Institutions should avoid litigation to the extent possible. An adversarial approach to resolving claims is not only costly to the institution in both time and resources; it is also emotionally and financially draining for claimants who are often of modest means and elderly.

There are options available for the resolution of claims that can achieve satisfaction for both parties. Our basic stance should be to seek alternative solutions to civil recourse whenever possible. To this end, Canada requires a current and nationally accessible repository of information on the resolution of claims, based upon case studies at home and abroad.

Treating "Orphaned" Cultural Property

As most of the victims perished in the concentration camps, there are untold thousands of looted works outstanding with no traceable heir and little likelihood of finding one. Despite their best efforts at tracing provenance, therefore, institutions may well find such works of spoliated art in their collections.

In such cases, museums, galleries, libraries and other institutions should, as a minimum, display commemorative messages along with exhibits of the works. Similar notes should accompany inventory lists of works whether on display or not. Institutions should also consider options that could include, for example, donation to Jewish community institutions or an appropriate Holocaust memorial fund.

First Step—Define The Problem

The first major step in developing Canada's strategy must be to define the scope of the problem, in terms of institutions and collections potentially affected. It stands to reason that not all institutions will include suspect works. On the other side, it is important to sound planning that we develop an estimate of the number and location of institutions and collections falling within the search criteria. Furthermore, it is important to assign levels of priority for allocating resources to the problem based upon the areas within collections at greatest risk.

Recommendation: That a national assessment be made of cultural collections with the aim of identifying collections in Canada at risk of including spoliated Holocaust-era cultural property.

Common Standards

It is important that institutions adopt a consistent approach to the resolution of matters related to Holocaust-era cultural property. There is a strong consensus that Canadian institutions must move forward based on common standards governing the treatment of possible tainted cultural property. Such standards would apply to the identification of works with incomplete provenance for the period 1933-45, through initial screening and provenance research, to the investigation of claims, access by claimants and the public to related information, cooperation with external researchers and other institutions and the management of restitution cases.

Such standards must also recognize the diverse operational and legal regimes in which institutions work across Canada and should, therefore, take the form of "best practices." Moreover, they must be subject to continuing review in light of changes in methodology, policy and law and the continuing international emergence research data.

Apart from guidelines developed by the Canadian Art Museum directors' Organization (CAMDO) some three years ago, and the Ethical Guidelines developed by the CMA, there is no common policy or standard governing the acquisition of works, the conduct of provenance research or the restitution of Holocaust-era cultural property.

Recommendation: That the CMA and provincial museum associations jointly develop common standards, in the form of "best practices", for application throughout Canada concerning the identification and treatment of potentially spoliated cultural property; and that such best practices be reviewed and updated on an annual basis.

Education and Awareness

Canada's success in resolving the issue of Holocaust-era cultural property rests largely upon our ability to enlist cooperation and continuing interest by the Canadian public, institutional stakeholders and the media. Delegates are concerned about an apparent lack of awareness and understanding among all three constituencies of the nature of the issue; its importance to the integrity of the Canadian cultural community and our international standing; the various and complex challenges involved; and the important work being done.

Central to Canada's strategy for dealing with the issue, therefore, must be an assertive and continuing information and awareness program aimed at informing and guiding the institutions, the public and the media. That effort, moreover, should provide opportunities for the target audiences to engage directly in the discussion and resolution of key issues.

This would require extensive coordination in the design, development and delivery of particular information products and services. It would also entail the serious commitment of communications resources through outreach strategies aimed at directly engaging the audience.

Recommendation: That a national communications strategy be implemented focussed upon stakeholder institutions, professional and volunteer staff, the public and the media, for the purpose of enlisting their support through increased awareness, understanding and acceptance of Canada's obligations concerning Holocaust-era cultural property, the nature of the challenges and related issues.

International Cooperation

This issue has an international political dimension directly engaging the Government of Canada. Canada's stature as a proponent of global cultural enrichment dictates not only that we take up our domestic responsibility, but that we also assert ourselves in the continuing international effort to resolve the spoliation issue.

One of the practical and important ways of assuming leadership would be for the Government of Canada to join the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) That convention enjoins the Contracting States to "contribute effectively to the fight against illicit trade in cultural objects by. …establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all…"

Federal officials contend that the Convention is not retroactive and could not, therefore, address the issue of Holocaust assets. Furthermore, officials point to the need for agreement of the provinces within whose legal jurisdiction much of the cultural property would fall.

Delegates recognize both challenges. They are not persuaded, however, that this is sufficient cause for Canada to defer action on UNIDROIT. Indeed, despite the limitation in the Convention's scope, signing on would represent a visible and important commitment by Canada to the growing international movement to curb crimes against cultural property. It would also represent a much-needed baseline for future action in similar circumstances.

Furthermore, while cultural property might arguably fall within the civil jurisdiction from a litigation perspective, there may be policy options available that would satisfy the provinces while enabling Canada to sign on (e.g., qualifying declarations). Delegates consider it timely and important that Canada open formal consultations with the provinces on the subject.

Recommendation: That the Canadian Museums Association, as the voice of the museum community on national issues, petition the Minister of Canadian Heritage to open formal consultations with the provinces on the goal of Canada's accession to the UNIDROIT Convention.

How should Canada *be organized to swiftly and effectively implement that strategy?*

Operational decisions regarding the investigation and treatment of potentially tainted assets fall within the separate responsibility of the concerned institutions, in accordance with their respective governance structures. Nevertheless, delegates agree upon the need for a central body to guide the implementation of key measures.

The precise form of such a body has yet to be determined; however, it could take the lines of a national council of stakeholders with secretariat support provided on a cost-sharing basis. Its general functions would include:

- Formulating policy, plans and standards governing the identification and restitution of spoliated cultural assets;
- Monitoring developments abroad and in Canada bearing upon the implementation of the strategy;
- Disseminating timely information to stakeholders concerning such international and domestic developments;
- Facilitating access by stakeholders to resources relevant to their purposes;
- Facilitating international cooperation through liaison with concerned international organizations and participation in related deliberations; and
- Reporting annually to the public on progress in respect of the strategy.

Recommendation: That a national body of stakeholders be established to guide, monitor and report upon the implementation of Canada's strategy for the identification and restitution of spoliated cultural assets.

What are the main operational requirements of institutions in implementing the strategy?

Access to Information and Expertise

Researchers are confronted by a vast and growing array of research focused on Holocaust-era cultural property. A myriad of Internet-based and published resources, operating in loose association or independently is an impediment to the effective and efficient investigation and resolution of potential restitution cases.

Furthermore, while there is an abundance of expert resources to assist researchers, the bulk of institutions lack resident resources having the necessary expertise to assist in managing the issue.

Delegates expressed concern that potential claimants are equally challenged in their search for information by the absence of a coherent research capability. While some institutions have moved to exhibit works of uncertain provenance on their Web sites, this is not considered sufficient in itself to maximize the prospective claimants' access to information. At any event, the present capability is confined to only a handful of Canadian institutions.

Delegates agree that Canada has a great opportunity to bring some order to the researchers' task, by establishing a central point of access (a portal) that would facilitate Canadian and foreign institutions, as well as potential claimants, in their investigations, expedite the resolution of claims and contain associated costs.

Such a portal should contain more than links to the concerned database resources. It would also contain relevant documentation (e.g., Canadian and international law and policy, studies of instructive cases); reference to Canadian and foreign sources of expertise; practical guidance on the various steps involved; and a forum for information sharing among stakeholders. Delegates further agree that the portal should have a public access component enabling claimants and independent researchers to gather information relevant to their concerns.

Recommendation: That a national, on-line research and information service be established that would make accessible current and relevant information and documentation, links to resources and guidance to institutions and the public in relation to Holocaust-era cultural property issues.

Funding for research, restitution and related training

Provenance research and the resolution of claims against suspected spoliated works impose a major operational burden upon institutions, especially smaller institutions struggling at the best of times to operate within severe budget constraints. There are several factors:

> The research process involves searching far-flung and diverse information resources, including a growing array of related Internet web-sites devoted to the issue of Holocaust-era cultural property, state-run archives and concerned heritage institutions in countries with varied requirements for public access to their records.
>
> Settling claims can be exceedingly complex and costly, to both the institution and the plaintiff. Furthermore, few institutions have at hand the specialized legal resources to assist them in the process. A single litigation might be sufficient to severely affect an institution's financial status.
>
> Most institutions lack assured access to suitably qualified research and administrative resources capable of overseeing the complex and specialized process of determining provenance and resolving claims.

Even with the best will, therefore, many institutions are greatly concerned about their capacity to properly address the issue. They forecast the need for significant support of staff training and enhancements to their research and administrative systems. Delegates believe that such assistance should take the form of both direct financial support and a consultation service giving professional advice to institutions (on-site if necessary) lacking a suitably qualified resident capability. Furthermore, they may require aid on a contingency basis in dealing with unforeseen and major litigation cases.

Recommendation: That the Department of Canadian Heritage establish a program to enhance institutions' capacity to resolve provenance and restitution issues, including direct financial support and expert consultation resources.

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Summary of Recommendations

1. Canada requires a national strategy for resolving the issue of Holocaust-era cultural property. That strategy should be based upon the following principles:

- *Recognizing the varied and complex legal requirements bearing upon the treatment of Holocaust-era cultural property, this is also a fundamental moral issue that speaks directly to Canada's stature as a proponent of social justice and diversity. It is also an urgent issue calling for immediate action by all parties concerned.*
- *Every museum in Canada has a moral obligation to check its collection for possibly tainted works from the 1933-45 era. Where there are gaps in the provenance of such objects, museums have the responsibility to declare this publicly and pursue restitution in accordance with recommendations in this report and guidelines issued by professional associations.*
- *However Canada may respond to the issue, any strategy must conform to our particular and unique geo-political circumstances.*
- *Museums, galleries, libraries and other institutions should, as a minimum, display commemorative messages along with exhibits of works with no traceable owner or heir. Similar notes should accompany inventory lists of works whether on display or not. Institutions should also consider options that could include, for example, donation to Jewish community institutions or appropriate Holocaust memorial fund.*
- *Canada's strategy should be designed as a template for guidance in dealing with comparable issues in the future.*
- *The strategy must incorporate mechanisms to ensure that the interests of all stakeholders are taken into account.*
- *The strategy must seek to engage potential claimants directly through outreach initiatives and other means to encourage and facilitate the search for information. Furthermore, the planning and decision process must be open and transparent to the public.*
- *While the focus of discussion is on spoliated art, Canada's strategy must consider other forms of cultural property including documents and other moveable property such as furnishings and historic artefacts.*
- *There are options available for the resolution of claims that can achieve satisfaction for both parties. Our basic stance, therefore, is to seek alternative solutions to civil recourse whenever possible. To this end, Canada requires a current and nationally accessible repository of information on the resolution of claims, based upon case studies at home and abroad.*

2. That a national assessment be made of cultural collections with the aim of identifying collections in Canada at risk of including spoliated Holocaust-era cultural property.

3. That the CMA, with provincial museum associations, develop common standards in the form of "best practices", for application throughout Canada concerning the identification and treatment of spoliated cultural property; and that such best practices be reviewed and updated on an annual basis.

4. That the CMA, CAMDO and the Department of Canadian Heritage jointly develop a national communications strategy focussed upon institutions, professional and volunteer staff, the public and the media, for the purpose of enlisting their

support through increased awareness, understanding and acceptance of Canada's obligations concerning Holocaust-era cultural property, the nature of the challenges and related issues.

5. That the Minister of Canadian Heritage open formal consultations with the provinces on the question of Canada's accession to the UNIDROIT Convention.

6. That a national council of stakeholders be established to guide, monitor and report upon the implementation of Canada's strategy for the identification and restitution of spoliated Holocaust-era cultural assets.

7. That the CMA and the Department of Canadian Heritage jointly establish a national, on-line research and information service (i.e., a "clearing house"), that would make accessible current and relevant information and documentation, links to resources and guidance to institutions and the public in relation to Holocaust-era cultural property issues.

8. That the Department of Canadian Heritage establish a program to enhance institutions' capacity to resolve provenance and restitution issues, including direct financial support and expert consultation resources.

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